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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/462,337	04/17/2000	Klaus-Peter Zeffler	2345/110	4964
7590 KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004				
09/26/2008				
EXAMINER				
KIM, DAVID S				
ART UNIT		PAPER NUMBER		
2613				
MAIL DATE		DELIVERY MODE		
09/26/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 09/462,337	Applicant(s) ZEFFLER ET AL.
Examiner DAVID S. KIM	Art Unit 2613

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 10 September 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Kenneth N Vanderpuye/
Supervisory Patent Examiner, Art Unit 2613

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments have been fully considered, but they are not persuasive. The contents of Applicant's arguments filed on 10 September 2008 (p. 6-9) are mostly the same as the contents of Applicant's arguments filed on 07 February 2007 (p. 6-9). For the contents of Applicant's arguments filed on 10 September 2008 that match the contents of Applicant's arguments filed on 07 February 2007, please refer to Examiner's responses in the most recent Office Action (the Final Rejection mailed on 10 April 2008). Applicant's most recent arguments (filed on 10 September 2008) do not address the merits of Examiner's responses in the most recent Office Action (the Final Rejection mailed on 10 April 2008). Accordingly, Examiner respectfully maintains the standing rejection and responses regarding the contents of Applicant's most recent arguments (filed on 10 September 2008) that match the contents of Applicant's arguments filed on 07 February 2007.

However, one portion of Applicant's most recent arguments (filed on 10 September 2008) differs noticeably from the contents of Applicant's arguments filed on 07 February 2007. This portion is Applicant's emphasis on "overhead" information and communication of Applicant's invention:

Specifically, the Siperko reference does not concern itself with signaling and control information - or even "overhead" information - which is a focus of the present invention.

The Widmer reference also does not provide for the "overhead" communication as in the present claims, and instead the reference by the Office Action to data source and extra information source is not believed comparable to that as claimed in the present invention as in claim 14.

(REMARKS, p. 6, highlighted portions regarding "overhead", emphasis Applicant's).

Examiner respectfully notes that the term "overhead" does not appear in the claim language. Rather, the claim language employs the term "signaling and control information". The "additional information" and the "extra information" of Widmer in col. 1, l. 12-24 correspond suitably to this claim term "signaling and control information" (e.g., Widmer, "extra information to...control and synchronize facilities" in col. 1, l. 15-16). Accordingly, Applicant's argument is not persuasive.

If Applicant would like the term "overhead" to be considered, Examiner encourages Applicant to amend the claim language to expressly include the term "overhead". However, Examiner also respectfully notes that the term "overhead" is a broad term in the art. Even if the claim language were to include the term "overhead", the "extra information to...control and synchronize facilities" in col. 1, l. 15-16 of Widmer would still constitute "overhead" since control and synchronization are common "overhead" functions. Still, if Applicant considers the "overhead" of Applicant's disclosure to be patentably distinguishable from the general concept of "overhead" in this field of art, then Examiner encourages Applicant to amend the claim language to (1) expressly include the term "overhead" with (2) additional claim language that discloses aspects of Applicant's "overhead" that would be patentably distinguishable from the general concept of "overhead" in this field of art.